



# ADMINISTRATIVE BULLETIN

## EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

91-1

January 25, 1991

TO: All Agency and Department Heads

RE: Executive Orders 295 and 296 -- Interim Controls on Contracting and Hiring

On January 3, 1991, Governor Weld issued two Executive Orders imposing temporary controls on hiring and contracting by executive branch departments and agencies. This Bulletin sets forth the procedures for the implementation of these Orders.

Executive Order 295 requires that every contract in excess of \$100,000 receive the written approval of the responsible cabinet secretary. Executive Order 296 requires that every hiring of a new employee receive the prior written approval of the Secretary of Administration and Finance. Both Orders are in force for a period of ninety days, i.e. through April 3, 1991. The Orders apply to all state agencies situated under any Secretary, as these terms are defined in G.L. c.29, s.1, but do not apply to the institutions of higher education.

A. Executive Order 295 -- Contracts in excess of \$100,000

The requirement of written cabinet secretary approval applies to any new contract or to any contract extension, amendment or modification entered into between January 3, 1991, and April 3, 1991, under which the Commonwealth's maximum obligation or (in the case of extensions, amendments, or modifications) the increase in the Commonwealth's maximum obligation is greater than \$100,000. The \$100,000 threshold applies to obligations from all fund types (including bond funds, federal funds, and trust funds) and applies to the total of obligations authorized under the contract in both the current and future years. This Executive Order applies to all types of contracts (including commitments against TELP agreements) which obligate the expenditure of Commonwealth funds, including, without limitation, contracts for goods, services, and leases.

In the case of contracts for services or leases, the Comptroller will not permit any payments to be made on the basis of any contract to which Executive Order 295 applies until the Comptroller's Office has verified the written approval of the appropriate cabinet secretary or his/her duly authorized designee. The signature of the secretary or designee on a pre-encumbrance approval (e.g., an SR document), dated on or after January 3, 1991, will serve as written approval. Alternatively, the secretary or designee may indicate approval by signing on the signature page of the contract itself.

In the case of contracts for information technology resources (Form AF-29), the Department of Procurement and General Services (DPGS) will not approve and authorize any contract to which Executive Order 295 applies without the prior written approval of the appropriate secretary, which approval may be indicated on the AF-29 form itself. Likewise, in the case of purchases of commodities, goods, equipment or supplies (other than purchases pursuant to price agreements), DPGS will not procure or otherwise contract for any purchases to which Executive Order 295 applies without the prior approval of the appropriate secretary, which approval may be indicated on the RX form itself. In the case of purchases pursuant to price agreements, purchase orders (PG transactions) in excess of \$100,000 will not be processed in MMARS without electronic approval by the appropriate secretary.

Any questions regarding the implementation of Executive Order 295 should be directed to Elizabeth Kilcoyne in the Office of the Comptroller, at 727-5000 ext. 219.

B. Executive Order 296 -- Hiring

The requirement of A&F approval of all new hires applies to all offers of employment made between January 3, 1991, and April 3, 1991, and applies to positions funded from all sources (including bond funds, federal funds, and trust funds). If a position was duly approved (through the ES-1 process) and an offer of employment was made and accepted before January 3, 1991, no further approval is required under the terms of Executive Order 296. In addition, the Executive Order expressly exempts appointments made by the Governor pursuant to statute.

In light of the severe budgetary limitations we face in the current fiscal year, no hiring will be approved except for: (a) court directed hiring; (b) the hiring of

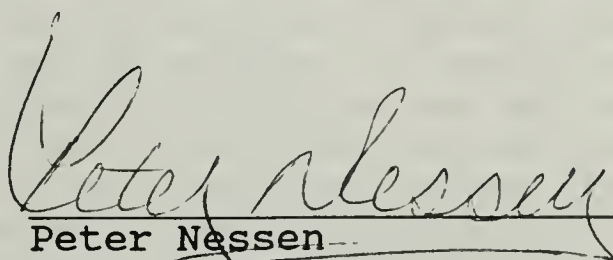


upper level management personnel (at the Secretary's request only) to replace similarly situated management personnel from the prior administration; and (c) the hiring of personnel to meet a documented emergency. Each hiring request submitted to me or my designee pursuant to Executive Order No. 296 should indicate into which of these categories the request falls, and shall include supporting documentation if the hiring is being sought pursuant to an emergency. In addition, no hiring request should be submitted to me or my designee unless the agency and the secretary have determined that the account from which the position will be paid will have sufficient funds to cover the costs of the position in FY91 and is expected to have sufficient funds in FY92 as well. These standards will remain in effect, subject to renewal, through April 3, 1991.

Each hiring request should be submitted using the revised Essential Service Position Review Form (ES-1). A copy of the revised ES-1 form and instructions are attached. The form must bear the authorized signatures of the department head and the secretary before submission to A&F.

I have named Personnel Administrator David A. Haley as my designee for the required review and approval process. The responsible cabinet secretary should forward ES-1 forms, together with supporting documentation, to the Department of Personnel Administration, Room 213, One Ashburton Place, Boston, MA 02108. Any questions regarding the implementation of this Order should be directed to Eugene H. Rooney, Jr., Deputy Personnel Administrator, at 617-727-3555.

Until further notice, new hiring occurring subsequent to April 3, 1991, will be governed by the Essential Services review process set forth in Administrative Bulletin 88-6, except that the forms included in the Attachment to this Bulletin 91-1 shall supersede the forms included in Bulletin 88-6.

  
Peter Nessen  
Secretary of Administration  
and Finance



## Instructions for Essential Service Position Review Forms

### FORM ES-1: ESSENTIAL SERVICE POSITION REQUEST

This form must be completed for each position a department wishes to fill. Departments not on the PMIS system and accounts not under the control of an executive department agency are not subject to this review process. To each Form ES-1, the department must attach the official Form 30 or MPDQ on file for the position and an organization chart including the position and all filled and vacant positions in the work unit.

An ES-1 Form for any position for which the department has made a job offer prior to January 3, 1991, should have a cover memorandum stating the date the offer was made, the date the employee started or was scheduled to start work and any other pertinent information. Attach documentation such as job offer letters.

In the space marked **"TYPE OF APPOINTMENT"**, indicate how the requested position is to be filled. Enter **"N"** for a new hire, **"R"** for a redeployment, reinstatement, reemployment or recall, **"P"** for a promotion, **"T"** for a transfer, **"D"** for a demotion, **"C"** for conversion to new employment status, or **"O"** for any other transactions. (Explain the reason why any request is coded **"O"**). For the purpose of this form, a redeployment is the **"hiring"** of an employee currently in another payroll organization (**"payorg"**) within the same department. A reinstatement is the restoration of a tenured employee to the payroll. Recall provisions of collective bargaining agreements and reemployment requirements of civil service law specify former employee rights and preferences when filling a position. Redeployments, reinstatements, reemployments and recalls as well as promotions, transfers, and demotions will be approved routinely unless there is evidence these actions are being used to circumvent the goals of the Essential Service Position Review process.

In the space marked **"ES-1 NO."** enter a unique sequence number consisting of the department's three-letter MMARS department code followed by a four-digit number starting with 0001 for the first ES-1 submitted.

Forms must be numbered in unbroken sequence, as actually submitted by the department head to the cabinet secretary.

In the space marked **"MMARS ACCOUNT TYPE"**, enter **"1"** for budgetary accounts (including assessed accounts), **"2"** for capital accounts, **"3"** for trust accounts and **"4"** for federal accounts.

In the space marked **"CATEGORY OF REQUEST"**, indicate why the requested position is to be filled. Enter one of the following codes: **"a"** for court directed hiring, **"b"** for critical management vacancies, **"c"** for meeting documented emergencies, and **"d"** for promotions, demotions, transfers, or other internal transactions required to maintain essential services.

In the space marked **"POSITION VACANT SINCE"**, enter **"N/A"** for a newly created position. Otherwise, enter the date the position became (or will become) vacant.

In the space marked **"DATE OF APPOINTMENT"**, enter the date the employee is expected to start work.

The explanation of why filling the position is of critical importance must include a description of the responsibilities of the work unit, the necessity of this position to the successful execution of the unit's tasks and the relation of those tasks to the department's priority goals. Specific references must also be made to the department's statutory mission and official PMS objectives. The narrative must describe in detail the service to be provided by the holder of the position (as distinct from other positions in the work unit), and must state the consequences of allowing the position to remain vacant. Include a realistic estimate of the urgency of filling the position at this time. Explain the steps that have been taken to find alternatives to filling the position, such as reassigning (consistent with applicable collective bargaining provisions and personnel statutes and regulations) an employee now performing less critical duties. If the position is related in function to other positions the department proposes to fill, explain the relationship and submit the requests together.

By signing this form, the Department Head is certifying that the person who fills the position will be performing the work described on the official Form 30 or MPDQ on file for the position and is signifying that the filling of the position will be in conformance with agency's affirmative action plan.





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SECRETARIAT \_\_\_\_\_ TYPE OF APPOINTMENT \_\_\_\_\_ (Explain "O") ES-1 NO. \_\_\_\_\_  
DEPARTMENT/AGENCY \_\_\_\_\_ CONTACT PERSON \_\_\_\_\_ TELEPHONE \_\_\_\_\_  
ACCOUNT NAME \_\_\_\_\_ ACCOUNT NUMBER \_\_\_\_\_ MARS ACCOUNT TYPE \_\_\_\_\_  
POSITION TITLE \_\_\_\_\_ POSITION TITLE CODE \_\_\_\_\_ PAY TITLE CODE \_\_\_\_\_ POSITION NO. \_\_\_\_\_  
CATEGORY OF REQUEST \_\_\_\_\_ (Specify for Code "d" below) POSITION VACANT SINCE \_\_\_\_\_ DATE OF APPOINTMENT \_\_\_\_\_

FOR PROMOTIONS, DEMOTIONS, TRANSFERS, OR OTHER TRANSACTIONS, SHOW THE CURRENT STATUS OF THE PROPOSED INCUMBENT EMPLOYEE:		
ACCOUNT NUMBER _____	POSITION TITLE _____	
POSITION TITLE CODE _____	PAY TITLE CODE _____	POSITION NUMBER _____

WHY IS FILLING THIS POSITION OF CRITICAL IMPORTANCE?

THE UNDERSIGNED DEPARTMENT HEAD CERTIFIES THAT THE EMPLOYEE WHO IS TO FILL THIS POSITION WILL PERFORM THE DUTIES DESCRIBED ON THE FORM 30 OR MPDQ AND HAS PROTECTED STATUS: NONE \_\_\_\_\_ MINORITY \_\_\_\_\_ FEMALE \_\_\_\_\_ DISABLED \_\_\_\_\_ VEV (CERTIFIED BY SOAA) \_\_\_\_\_

SIGNED: \_\_\_\_\_ DEPARTMENT HEAD \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_ CABINET SECRETARY \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_ SECRETARY OF A&F \_\_\_\_\_ DATE: \_\_\_\_\_

APPROVED DATE OF APPOINTMENT: \_\_\_\_\_







# ADMINISTRATIVE BULLETIN

## EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

91-2

January 30, 1991

TO: Cabinet Secretaries and Agency Heads

RE: Reductions in Force/Layoff Procedures

The purpose of Administrative Bulletin 91-2 is to restate the statutory, contractual and policy requirements governing reduction in force/layoff procedures in executive department agencies.

This Administrative Bulletin supersedes the provisions of Administrative Bulletin 90-6 and Administrative Bulletin 89-3.

The decision to implement reduction in force plans and effectuate layoffs has far reaching consequences. The planning and implementation of such actions must be carried out with the utmost seriousness and sensitivity to the needs of the citizens of the Commonwealth and the state government workforce. Affected employees and managers are entitled to full and fair consideration based on accurate information and objective criteria.

Attached are directives prepared by the State Office of Affirmative Action, Office of Employee Relations, Group Insurance Commission, Division of Public Employee Retirement Administration and the Department of Personnel Administration. These guidelines are comprehensive and consistent with the provisions of law, executive orders and the current collective bargaining agreements. Questions concerning these requirements should be directed to the cognizant Administration and Finance agency.

*Peter Nessen*

Peter Nessen  
Secretary of Administration  
and Finance

### Attachments

Copy to: Secretariat and Agency Affirmative Action Managers  
Agency Labor Relations and Personnel Representatives  
Group Insurance Commission Coordinators



## Reductions in Force/Layoff Procedures

### Summary

- . The decision as to the size of personnel cuts and the functional areas to be affected is a managerial one. Management may determine to completely eliminate a functional area or may choose to curtail but not eliminate a variety of organizational units. Once these core managerial decisions have been made, the agency head must then examine the current staffing of those areas to identify the official job titles of the individuals performing the function to be eliminated. The person who is actually to be laid off is determined by his or her status (provisional, temporary, permanent) and his or her seniority (length of service with the particular department/agency).
- . When planning any layoffs, consideration of Affirmative Action must continue to be an integral part of all decision making. Many agencies have reached a critical point in retaining protected group employees. It is therefore important that your Affirmative Action Manager be part of the planning process from the first step.
- . The Department of Personnel Administration will be available for consultation on RIF planning and Civil Service issues.
- . Notification to employees who are being laid off should be fourteen (14) calendar days prior to the actual date of the layoff.
- . Notification to the Office of Employee Relations must take place one (1) week prior to the issuance of layoff notices to affected employees in order that required meetings with collective bargaining representatives can be arranged and information verified.
- . Notification to the State Office of Affirmative Action must take place one (1) week prior to the issuance of layoff notices to affected employees.
- . Certain employees who are being removed or discharged from service have the right to a hearing before the State Board of Retirement. The discharge of these employees is not effective until and unless a written notice containing a fair summary of the facts upon which the action is taken is filed by the employer with the State Retirement Board. In addition, the employee must receive from the employer a notice by registered mail, return receipt requested, of his or her rights to a retirement board hearing, a summary of the retirement



options available, and a summary of the facts upon which the action is based.

- . Appointing authorities must advise laid-off employees of their right to continue group insurance coverage when the employee receives a termination notice. Continued group life and health insurance coverage is available to laid-off employees who are already covered by the Group Insurance Commission (GIC). This coverage is available for 39 weeks and the premiums for it are paid entirely by the employee. The employee is also eligible for other continuation insurance options outlined in the GIC Coordinator's Manual.

## STATE OFFICE OF AFFIRMATIVE ACTION

TO: Cabinet Secretaries, Agency Heads, Secretariat and  
Agency Affirmative Action Managers, Labor  
Relations and Personnel Representatives

FROM: Linda Lynn-Weaver, Director  
State Office of Affirmative Action

DATE: January 17, 1991

RE: Affirmative Action Requirements for  
Reductions in Force

### INTRODUCTION

This Bulletin outlines the essential role of affirmative action in the process to be followed by Appointing Authorities in deciding on and implementing layoffs. Each Appointing Authority must ensure that his or her Affirmative Action Manager is included in the decision making process, and that affirmative action is considered simultaneously with contractual and other obligations. Both Executive Order 227 (as amended by 235/253 and 246) and the Commonwealth's union contracts mandate aggressive affirmative action measures in carrying out layoffs.

### THE ESSENTIAL AFFIRMATIVE ACTION REQUIREMENTS OF THE LAYOFF PROCESS ARE AS FOLLOWS:

- . Protected groups (minorities, women, Vietnam era veterans and persons with disabilities) should not be laid off in percentages greater than their representation in any job category of your agency's workforce.
- . Your agency MUST COMPLETE BOTH OF THE ATTACHED LAYOFF PROPOSAL FORMS and present them to the State Office of Affirmative Action (SOAA) at least 7 days prior to the planned issuance of 14 day layoff notices to individual employees.
- . Your agency MUST RESOLVE SOAA OBJECTIONS to its Layoff Proposal BEFORE LAYOFF NOTICES ARE ISSUED.
- . Because time is of the essence, SOAA will work with you on your Layoff Proposal while it is still tentative. DO NOT WAIT until internal discussions and union deliberations are completed, to present your proposal to SOAA. Doing so may cause critical delays in the layoff process.



- . Refer to the instructions accompanying the attached forms and call SOAA, as soon as possible, with any additional questions.

#### LAYOFF PLANNING

Appointing Authorities have broad discretion in identifying programs and functions for elimination or reduction. It is the responsibility of each Appointing Authority to assess agency operations together with workforce composition and affirmative action protected group representation, as they determine which functions and personnel are to be reduced. Decisions made relative to functional responsibilities do not necessarily determine the specific individuals to be laid off. Where, for example, members of an underrepresented protected group perform functions which are under consideration for elimination, every effort should be made to explore various reallocations of protected personnel to avoid disproportionate layoff impacts.

If it appears that layoffs from a particular title would have a disproportionate impact on any protected group, the Appointing Authority should take steps to effect reductions from other titles, or some combination of titles and/or functions, so that the potential for adverse impact is lessened.

The above projections and preliminary analyses must consider the potential impact of layoffs upon the composition of employees in each title and job category, taken collectively. The agency affirmative action plan, including goal setting segments and the most recent Quarterly Reports on workforce, will be useful tools during these analyses.

Identification of positions to be eliminated will not necessarily identify the individuals to be laid off. Agencies must take care to see that the actual identification of individuals is deferred until after: a) affected title blocks have been selected, b) the number of affected employees in each title has been estimated, and c) these projections have been reviewed and approved by SOAA.

If the Affirmative Action Manager identifies the potential for disproportionate impact on any protected group in any EEO-4 job category, that information must immediately be reported in writing to the Appointing Authority. The Appointing Authority should require the Affirmative Action Manager and Personnel and Labor Relations Representatives to meet jointly to explore alternatives. If matters remain unresolved, the agency should immediately notify SOAA of the anticipated disproportionate layoff impact(s).



## RIGHTS OF APPEAL

All layoff notices must inform employees of their right to appeal layoff decisions to OER, SOAA, the Massachusetts Commission Against Discrimination, or other forums as appropriate.

## MAINTENANCE OF AFFIRMATIVE ACTION MANAGER POSITIONS

The continued success of the Commonwealth's affirmative action efforts depends not only upon the cooperation of Cabinet Secretaries and Agency Heads, but upon the essential participation of Secretariat and Agency Affirmative Action Managers. These individuals are never more vital than when helping to plan and implement layoffs so as to comply with the Commonwealth's Executive Orders and minimize liability for individual agencies and the Commonwealth in general. Accordingly, SOAA's concurrence must be obtained prior to any layoff decisions which would alter an agency's staffing in its affirmative action office at this most critical time. Please contact us immediately to discuss the format for submission of such a proposal if reductions are being considered in your affirmative action office.

All inquiries regarding these matters should be directed to the SOAA Director or Legal Counsel at (617) 727-7441. TTY# (617) 727-6015, FAX Number (617) 727-0568.

## INSTRUCTIONS FOR LAYOFF PROPOSAL FORMS

- o Form 1: In Part A, list, without names, the individuals anticipated to receive layoff notices. In Part B you should make the best predictions you can as to how the layoff pool might change due to the exercise of bumping rights.
- o Factors customarily weighed in making bumping predictions include: the relative seniority of other employees in the same title or lower titles within the same geographical area; the likelihood of employees being willing to travel to other locations (and whether bumping is statewide or by region); and the likelihood of particular employees electing retirement or otherwise departing the agency rather than bumping to lower classifications.
- o Bumping predictions are only your best estimate of the results of the bumping process, but they are an essential part of layoff planning and must be done with as much care and accuracy as the bumping process permits.
- o Where predicting that an employee departing the agency will be the same person who received the initial layoff notice, it is not necessary to repeat the information from Part A of Form 1 in the same entry under Part B. Instead, indicate under Part B why the employee is not bumping (e.g. employee is a manager, or least senior in title series or region, or retiring, or electing to take layoff).
- o Columns 3 and 4 of Form 2 summarize the data from Part A of Form 1, concerning employees receiving notices.
- o Similarly, columns 5 and 6 of Form 2 summarize the data from Part B of Form 1, concerning those projected to actually depart the agency.
- o If the employees in a particular job category include no members of a certain protected group, please enter "0" in the row for that protected group on Form 2, rather than merely leaving the space blank.
- o Space on both Forms is obviously restricted. You may complete them by hand, but if you furnish a 5 1/4" computer floppy diskette, SOAA will provide you with the necessary Lotus program (thus saving you the trouble of calculating percentages for columns 2, 4, 6, 8 and 9). The latter is strongly recommended.

## A. EMPLOYEES PROPOSED TO RECIEVE INITIAL LAYOFF NOTICES

B. EMPLOYEES PROJECTED TO DEPART AGENCY  
ONCE BUMPING IS COMPLETED

TITLE AND EEO-4 JOB CATEGORY	BARG. UNIT	DEPT.	SERVICE DATE	RACE CODE	CHECK IF:		
		SEX			VEV	DIS	

TITLE AND EEO-4 JOB CATEGORY	BARG. UNIT	DEPT.	SERVICE DATE	RACE CODE	CHECK IF:		
		SEX			VEV	DIS	





EEO-4 JOB CATEGORY	1	2	3	4	5	6	7	8	9*	By:
	WORKFORCE Pre-RIF	%	LAYOFFS NOTICES	%	LAYOFFS PROJ'D	%	WORKFORCE Post-RIF	%	DISPROP. IMPACT	
OFFICIAL/ADMIN. (Total)		X		X		X		X		
Minority										Agency
Female										
Disabled										
VEV										Date Submitted
PROFESSIONAL (Total)		X		X		X		X		
Minority										
Female										Proposed Notice Issuance
Disabled										Date
VEV										
TECHNICAL (Total)		X		X		X		X		
Minority										
Female										Affirmative Action Manager
Disabled										Signature
VEV										
PROTECTIVE SERVICE (Total)		X		X		X		X		
Minority										
Female										
Disabled										Agency Head
VEV										Signature
PARA-PROFESSIONAL (Total)		X		X		X		X		
Minority										
Female										
Disabled										
VEV										
OFFICE CLERICAL (Total)		X		X		X		X		
Minority										
Female										
Disabled										
VEV										
SKILLED CRAFT (Total)		X		X		X		X		
Minority										
Female										
Disabled										
VEV										
SERVICE MAINTENANCE (Total)		X		X		X		X		
Minority										
Female										
Disabled										SOAA Approval:
VEV										
AGENCY TOTAL		X		X		X		X		
Minority										
Female										
Disabled										
VEV										Date

\*DISPROPORTIONATE IMPACT: Subtract Column 2 from Column 6; if greater than zero, enter result in Column 9.





## OFFICE OF EMPLOYEE RELATIONS

TO: Cabinet Secretaries, Agency Heads  
and Labor Relations and Personnel Representatives

FROM: John R. McKeon, Director

DATE: January 16, 1991

RE: Reductions in Force/Layoff Procedures

### 1.0 Statement of Purpose and Scope

This memorandum outlines procedures to be followed by appointing authorities in any layoff of employees. The procedures insure that any layoffs are implemented in accordance with all statutory and contractual requirements. The procedures are also designed to insure minimum disruption to department/agency operations.

### 2.0 Definitions

For purposes of this memorandum the words and phrases listed below shall have the following meaning:

Tenured Employee - An employee with statutory protection in his/her position including the following subcategories.

- a) Permanent civil servants with tenure -- persons who have passed the examination and been certified in permanent positions subject to G.L. c.31 that are not owned by another individual and who have successfully completed a probationary period, or who have otherwise acquired statutory tenure.
- b) Veterans -- Those veterans (as defined in Chapter 31, Section 1) who have held a non civil-service position for three or more years. Veteran's preference for layoff purposes does not apply to managers in M-V and above if the incumbent entered the position after June 27, 1981.
- c) Disabled veterans -- permanent civil servants within the title who are also disabled veterans. (MGL Chapter 31,

Section 6 states: "a disabled veteran shall be retained in employment in preference to all other persons, including veterans".

- d) Institutional quota employees -- nurses and non-professionals who have worked in permanent, non-civil service institutional positions for 6 months or more.
- e) Institutional teachers -- teachers in state institutions who have worked in a permanent non-civil service position for three (3) years or more.
- f) Others, special tenure -- persons in positions who have been granted tenure through a special act of the Legislature.

Non-Tenured Employees <sup>1/</sup> - An employee without statutory protection in his/her position including the following sub-categories:

- a) Provisional Appointee or Promotee -- persons appointed or promoted to civil service positions pending the establishment of an eligible list.
- b) Probationary -- persons who have been permanently certified after examination but who have worked less than six months.
- c) Exempt -- persons employed in positions which are not subject to G.l. c. 31, or exempt appointments or promotions to civil service positions.
- d) Temporary -- persons appointed from civil service certification to a temporary-position or to an incumbered permanent position.

Bargaining Unit Employee - An employee occupying any official title assigned to one of the twelve state bargaining units and whose position has not been designated confidential by the Office of Employee Relations.

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1. Please note that an employee may be tenured in one job title and be non-tenured in a title of higher grade.



Managerial or Confidential Employee -- An employee who by virtue of his/her official title or function has been excluded from the coverage of the Collective Bargaining Law and any collective bargaining agreement.

Unassigned Employee -- An employee whose official job title has not been assigned to any collective bargaining unit and who has not been designated managerial or confidential. For purposes of these procedures, such persons should be treated as managerial employees.

Non-Employee -- This category includes among others, those persons whose compensation is paid from the 03 or 07 subsidiary accounts. Such persons are not covered by these procedures.

Note: Tenured/Non-Tenured Employees and Bargaining Unit/Managerial/Confidential/Unassigned are not mutually exclusive. Employees in all the above groups may be tenured or untenured depending on individual circumstances.

### 3.0

#### Preliminary Management Decisions

In some cases the specific job titles to be affected by a layoff will be determined by the Legislative Branch through scheduling of positions. In most cases, however, the agency head will have broad discretion in identifying areas for reduction.

Once the appointing authority (or agency head) has determined a need to achieve economies in the area of personnel expenditures which cannot be achieved by attrition, the next step is an analysis of the size of the reduction to be achieved and a functional analysis of agency operations to determine which aspects of the agency's operations should be curtailed. The decision as to the size of personnel cuts and the functional areas to be affected is a managerial one. Management may determine to completely eliminate a functional area or may choose to curtail but not eliminate a variety of organization units.

Once these core managerial decisions have been made the agency head must then examine the current staffing of those areas to identify the official job titles of the individuals performing those functions and the numbers of such employees in each title. Once this examination is completed management will be in a position to determine the



number of positions to be eliminated in each title. It should be noted that a decision to eliminate a position in a particular functional area does not necessarily mean that the employee in that position will be laid off. It does mean, however, that at minimum the employee will no longer be performing that particular function and it does mean that some employee in that title (the least senior) will be laid off or bumped.

Once the decision as to the size of the layoff has been made and the particular functional areas and official titles to be affected have been identified, the agency head can commence the following procedures to implement the layoff.

#### 4.0 Preparatory Steps

The Agency head must first designate a person with operational authority and responsibility for carrying out the layoff. Once designated that person should commence the following:

#### 4.1 Information Preparation

Prepare, to the extent necessary, the following data:

- A. A list of provisional bargaining unit employees occupying the titles (s) to be affected within the department/agency or appointing authority ranked in order of seniority with seniority defined as follows:

Total length of service within the department/agency for any bargaining unit employees. <sup>2/</sup>

[Note that in compiling a list of provisional employees, there may be employees who are provisional in one title but who have permanent status in another title. Such person's name should be marked with an asterisk on your list, in the event they are bumped back to their permanent position. Once back in their permanent position their civil

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2. Special care must be taken to comply with Supplemental Agreements K and V of the Alliance Agreement which affects all employees in Units 8 and 10 and certain employees of the Departments of Mental Health and Mental Retardation in Unit 2.

service seniority date applies for  
layoff purposes.]

- B. A list of temporary (from certification) bargaining unit employees within the department/agency or appointing authority occupying titles to be affected ranked in order of seniority as determined above.
- C. A list of tenured employees in the affected titles within the appointing authority ranked in order of seniority with seniority as defined by G.L. c. 31 Section 33 (length of service since original permanent appointment). (see note on page one for disabled veterans)

NOTE: In compiling these seniority lists it is important to verify the accuracy of personnel histories from which the seniority dates are obtained.

If you have any questions or need clarification as to the employment status of any employee, please contact Employment Information at the Department of Personnel Administration.

**D.P.A. Telephone Number: 727-5504**

#### 4.2 Notification to Office of Employee Relations and Collective Bargaining Representative

AS FAR IN ADVANCE OF ANY LAYOFF AS IS PRACTICABLE but no fewer than 7 days before any layoff notice is issued, the Department/Agency SHALL notify the appropriate OER representative(s) of the approximate number and type of employees to be affected and the estimated effective date of the layoff.

**O.E.R. Telephone number: 727-5403**

The OER representative (s) will coordinate the notifications to the various collective bargaining representatives and the scheduling and conduct of any labor/management meetings and agreements concerning the layoffs. The agency representative should not contact any unions individually.

#### 4.3 General Notification to Employees

As the layoff date approaches it may be advisable for the agency head to send a memo to all staff outlining in a general way the scope and timing of the layoffs and a brief description of the



layoff/bumping procedure. The purpose of such a memo is for informational and morale purposes and the decision as to the wisdom of sending such a notice is left to the discretion of agency heads. No such notice should be sent to employees until it has been reviewed by O.E.R. representatives. The OER person will also be available for assistance in drafting this letter.

## 5.0 Layoff

5.1 Categorize the employees in the affected titles in your department/agency <sup>3/</sup> according to their civil service status by titles:

- a) provisional
- b) temporary (from certification)
- c) permanent and other tenured (including permanent probationary)

All provisionals in a title (including confidentials) must be laid off before any employees with temporary (from certification) status. All temporary (from certification) employees must be laid off before any employees with permanent or other tenured status. (including permanent probationary).

5.2 Rank the employees in each title by category using seniority as defined in section 4.1 above. Non-tenured managerial and confidential employees may be laid off or retained without regard to contractual seniority.

5.3 Notify the employees to be laid off in writing as soon as possible, but in no event later than the following time limits:

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3. For civil service tenured employees, layoff is by "departmental unit" which is defined as "a board, commission, department or any division, institutional component, or other component established by law, ordinance, or by-law." For these employees their departmental unit would hold regardless of collective bargaining agreements to the contrary.

In several of the collective bargaining agreements and work rules, layoffs are conducted within region or within each appointing authority rather than agency-wide. See for example Supplemental Agreement K and V in the Alliance Collective Bargaining Unit. Please contact the designated OER representative to determine the impact of these provisions on your agency.



- A. for non-tenured, non-bargaining unit employees there are no time requirements for notification.
- B. for employees in any bargaining unit, at least 5 days' written notice is required. Longer notice is required for employees in these bargaining units:

Unit 1 -- 5 working days  
 Unit 3 -- 5 working days  
 Unit 6 -- 5 working days  
 Unit 7 -- 10 working days  
 Units 8+10 -- 10 working days  
 Unit 9 -- 10 working days

(See sample notice and instructions, Attachment "A".)

- C. for employees with permanent and other tenured status, not less than seven (7) days' notice of hearing; including date, time and place of hearing. These employees must be given written notice of the appointing authority's decision two (2) days after the hearing.

(See sample notice and instructions, Attachment "B".)

## 6.0 Bumping

- 6.1 Tenured Employees -- Tenured employees must be laid off according to seniority as defined by G.L. c.31, Section 33. They may, within seven days of notice from the appointing authority of the intended layoff, request in writing that they be demoted to the next lower title or titles in succession. When a disabled veteran is employed, s/he may bump to the lowest level of the job series; when at the lowest level, s/he is to be retained in preference to all other employees, including veterans, who have no preference in layoff situations.

- 6.2 Non-tenured Bargaining Unit Employees - A non-tenured bargaining unit employee who has received notification of layoff may file a request in writing, within the time specified in the applicable Collective Bargaining Agreement, to be demoted to a lower title in the same bargaining unit for which he/she is determined qualified by the Employer. In order to bump, there must be an employee junior (as defined for that bargaining unit) in the lower title. In all cases the

employees bumped must be the least senior in the titles within the agency or appointing authority.

The burden is on the employee to identify the title or titles to which he/she wishes to bump. However, the designated person within the department/agency should be available to discuss the available options with the employee and to provide employees with appropriate information such as copies of job specifications, and to determine if the employee is qualified to perform the duties of the position to which he/she is bumping.

Once the group of employees to be bumped has been identified the layoff process is then repeated with individual notices to bumped employees. These employees may in turn bump other employees in lower titles for which they are determined qualified provided that there are less senior employees in such titles. It is imperative that each agency advise the appropriate Assistant Director at the Office of Employee Relations of the bumping process so that all bumping is conducted pursuant to contract rules.

#### 7.0

#### Payment of Accumulated Leave to Laid Off Employees

- A. SICK LEAVE PAY Employees who are laid off do NOT receive payment for accrued sick leave. Should these employees return to work for the Commonwealth from a re-call list, they will receive their prior sick leave credits at that time. Only those employees who are eligible to retire and whose retirement application is accepted by the State Board of Retirement are entitled to the 20% sick leave buy back.
- B. VACATION LEAVE Employees who are laid off ARE entitled to receive payment for any vacation leave which they have on the books at the time they are laid off. This includes:
  - (1) any vacation leave credits legally "carried over" into the present fiscal year from the prior fiscal year, which remain unused.
  - (2) any vacation leave credited to an employee on the preceding June 30, which remains unused.

- (3) any vacation leave earned by the employee since June 30 up to the time of layoff. (This is the portion of the leave that would have been credited to the employee on the up-coming June 30, had he/she not been laid off.)

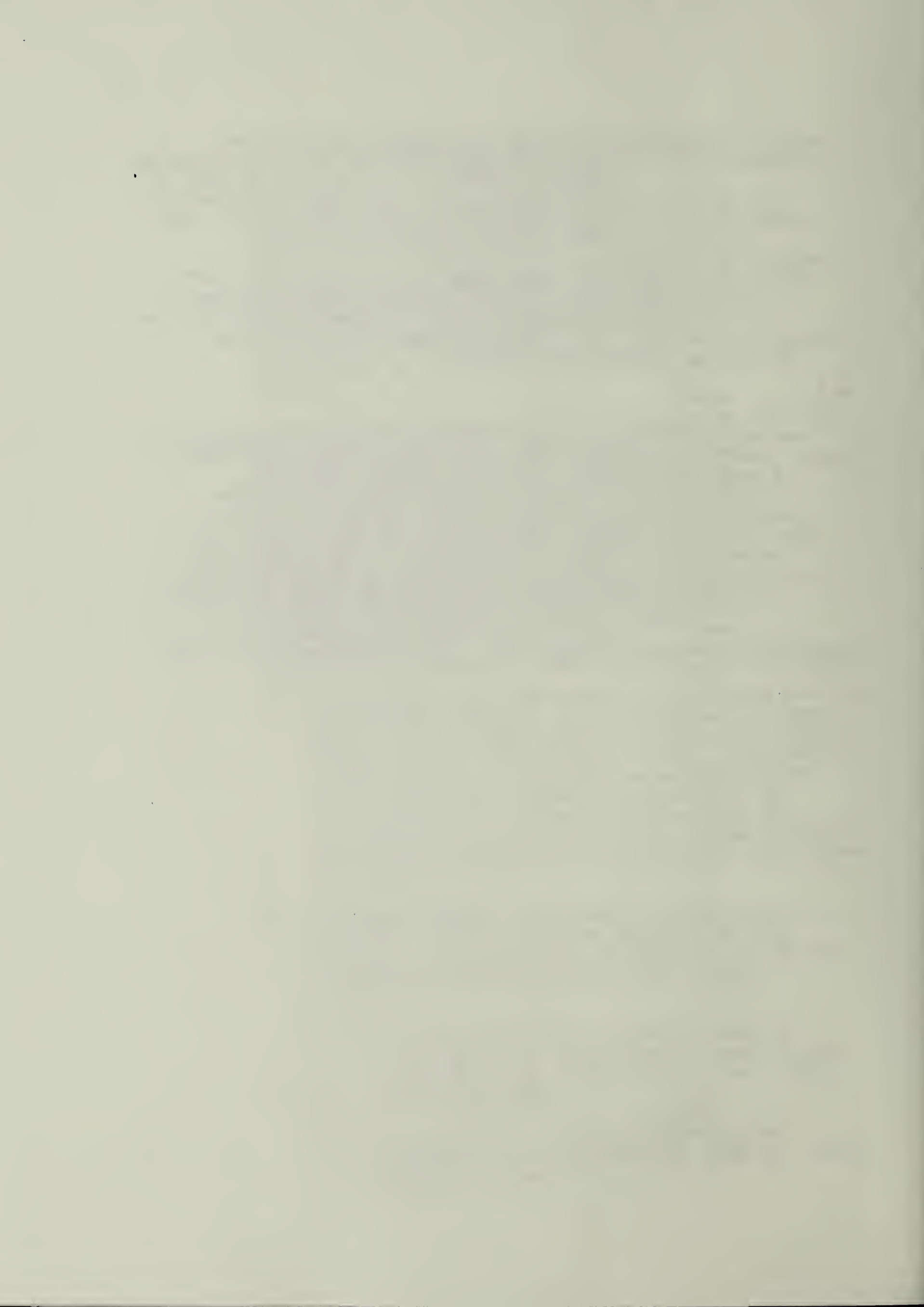
C. PERSONAL LEAVE Employees who are laid off should be allowed to use accrued personal leave where possible. No compensation may be paid for unused accrued personal leave following a layoff.

## 8.0

### Recall

Permanent and other bargaining unit employees who are displaced from their positions under these procedures have certain rights regarding restoration to their positions should these positions be refilled. As a general rule the recall process operates in the same manner as layoff and bumping except that the process is reversed. For this reason it is essential that department/agencies maintain accurate records of the layoff/bumping process including retention of seniority lists. More detailed procedures concerning recall will be promulgated at a later date.





## DEPARTMENT OF PERSONNEL ADMINISTRATION

TO: Cabinet Secretaries and Agency Heads  
FROM: David A. Haley, Personnel Administrator  
DATE: January 16, 1991  
RE: Layoff Of Managers

This memorandum outlines procedures to be followed by appointing authorities in the layoff of managers. The procedures are intended to insure that layoffs are implemented in accordance with all statutory requirements. The procedures are also intended to insure that layoffs are implemented in a manner that is fair and which results in minimum disruption to department/agency operations.

### DEFINITIONS

While most managers have no statutory protection, some managers do have tenure either in their present or in a lower position. Management employees include:

- a. Permanent Civil Servants - persons who have passed an examination and have been appointed to a permanent position pursuant to G.L. c. 31. This category may include managers who were "grandfathered" in their civil service status pursuant to Chapter 699 of the Acts of 1981. This category also includes managers who have permanent civil service status in a lower position than the one in which they currently serve.
- b. Veterans - veterans who have held an appointment to a non-civil service position for 3 years or more have tenure. Note: No person appointed to a position in Job Groups M-V through M-XII after June 27, 1981 can attain veteran tenure.
- c. Disabled Veterans - permanent civil service employee who are also disabled veterans.
- d. Temporary Employees - managers appointed from a civil service list to a temporary position.
- e. Others, Special Tenure - persons in management positions who have been granted tenure through a special act of the General Court.
- f. At-will Managers - management employees who have no civil service or other statutory status.

## PRELIMINARY MANAGEMENT DECISIONS

Once the number of positions to be eliminated has been determined, the next step leading to layoff is a functional analysis of agency operations to determine which aspects of an agency's operations should be curtailed. Management may determine to completely eliminate a functional area or may choose to curtail or reorganize a variety of functional units.

Once these basic managerial decisions have been made, the agency head must then examine the current management staffing of those areas to identify the individuals performing those functions. It should be noted that a decision to eliminate a position in a particular functional area does not necessarily mean that the manager in that position will be laid off. It does mean, however, that at minimum, the manager will no longer be performing that particular function and it does mean that some manager in that title will be laid off or bumped.

Once the decision as to the size of the layoff has been made and the particular functional areas and positions to be affected have been identified, the agency head can commence the following procedures to implement the layoff.

## PREPARATORY STEPS

The first step leading to the successful implementation of a layoff is the designation by the agency head of a person or persons with operational authority and responsibility for carrying out the layoff. The agency's affirmative action officer should play an integral role in this process. Once designated, those persons should commence the following:

## INFORMATION PREPARATION

Prepare, to the extent necessary, the following data:

- A. A list of tenured managers in the affected titles within the appointing authority ranked in order of seniority with seniority as defined by G.L. C. 31 s. 33 (length of service since original permanent appointment).
- B. A list of temporary (after certification) managers within the department/agency or appointing authority occupying titles to be affected ranked in order of seniority as determined above.
- C. A list of all other managers in affected titles.



## GENERAL NOTIFICATION TO MANAGERS

As the layoff announcement date approaches, it may be advisable for the agency head to send a memo to all managers outlining in a general way the scope and timing of the managerial layoffs and a brief description of the layoff procedure. The purpose of such a memo is for informational and morale purposes and the decision as to the wisdom of sending such a notice is left to the discretion of agency heads.

### LAYOFF

Categorize the managers in the affected positions in your department/agency according to their tenured status by management level:

- a. permanent and other tenured managers;
- b. temporary managers (from certification);
- c. At-will managers.

All at-will managers in a management level must be laid off before any manager with temporary (after certification) status. All temporary (after certification) managers in a management level must be laid off before any manager with permanent or other tenured status.

Managers with tenured or other civil service status should be ranked in each management level by category using seniority as defined by G.L. c. 31 s. 33 (length of service since original permanent appointment).

Managers who have tenure and also are disabled veterans should be the last managers to be laid off.

Notify the managers to be laid off in writing as soon as possible, but in no event later than the following time limits:

1. for non-tenured, at-will managers there are no time requirements for notification, (see sample letter A-2);
2. for employees with permanent and other tenured status, not less than seven (7) days' notice of hearing, including date, time and place. These employees must be given written notice of the appointing authority's decision two (2) days after the hearing.

(see sample notice and instructions, Attachment "B").

3. In the event that any manager with more than 15 years of service as a member of the state retirement system (or veteran with more than 10 years) is to be laid off, the procedural requirements outlined in G. L. C. 32 s. 16 must be reviewed and complied with by the appointing authority.

### BUMPING

Tenured Employees - Tenured managers who are laid off from their positions have certain statutory bumping rights which must be respected. (See for example G.L. c. 31 s. 39).

The burden is on the manager to identify the civil service title or titles to which he/she wishes to bump. However, the designated person within the department/agency should be available to discuss the available options with the manager and to provide managers with appropriate information such as copies of job specifications.

Once the group of managers or employees to be bumped has been identified, the layoff process is then repeated with individual notices to bumped employees. These employees may in turn bump other employees in lower titles for which they are determined qualified provided that there are less senior employees in such titles. Please note that the minimum five (5) day notice provisions are recommended but not required for employees who are bumped. NOTE: If tenured managers will be bumping into bargaining unit positions, the Office of Employee Relations should be notified prior to any notification being made to employees.

### RECALL

Tenured managers who are displaced from their positions under these procedures have certain rights regarding restoration to their positions should these positions be refilled. As a general rule, the recall process operates in the same manner as layoff and bumping except that the process is reversed. For this reason, it is essential that department/agencies maintain accurate records of the layoff/bumping process including retention of seniority lists.

### AT-WILL MANAGERS

As stated above, there are no seniority rights attaching to non-tenured at-will managers. However, because most managers fall in this category, it is important to outline some considerations that should be taken into account in making these layoff decisions.

### Agency Needs

A primary consideration in making layoff determinations among non-tenured at-will managers is an assessment of the managerial needs of the agency required to provide mandated services and meet agency objectives.

### Affirmative Action

Agencies should take all possible measures to ensure that the gains made in the hiring of minorities, women, the disabled and Vietnam veterans are maintained and that layoffs do not have a disproportionate impact on these groups.

### Service of the Commonwealth

While at-will managers have no statutory seniority rights, length of service with the Commonwealth, while not determinative, should, along with the other factors discussed above, be given consideration. A layoff plan that results in the disproportionate layoff of older managers may be found to be invalid.

Please contact the Department of Personnel Administration at 727-3555 if you need further guidance.





## GROUP INSURANCE COMMISSION

TO: Cabinet Secretaries, Agency Heads,  
and GIC Coordinators

FROM: Dolores L. Mitchell, Executive Director  
Group Insurance Commission

DATE: January 16, 1991

RE: Layoff of State Employees

Over the course of the next few weeks many of us will be faced with the unpleasant task of having to lay off employees due to budget reductions. This memorandum describes how to assist them in dealing with their health and life insurance coverage.

Appointing authorities must advise laid off employees of their right to continue group insurance coverage at the time the employee receives a termination notice. Continued group life and health insurance coverage is available to laid off employees who are already covered by the Group Insurance Commission (GIC). This coverage is available for 39 weeks and the premiums for it are paid entirely by the employee. The employee is also eligible for other continuation insurance options outlined in the GIC Coordinator's Manual.

### PROCEDURES

Agencies must inform the GIC of a termination when the employee receives a lay-off notice, whether or not he/she wants to continue any group insurance coverage. Procedures and deadlines for notifying the GIC of a layoff are outlined in the GIC Coordinators Manual. If the employee leaves prior to the layoff date, send GIC an updated Insurance Change Notice correcting the termination date.

Laid off employees must receive an option form along with the termination notice. If the laid off employee wants to continue his/her group insurance coverage, he/she must elect one option and notify the GIC within 30 days of the last day of employment.

If you have any questions, please call GIC at 727-2310, ext. 3062.





## FOR EMPLOYEES WHO TERMINATE SERVICE DUE TO LAYOFF

### 1. LAYOFF

If you leave state employment because of a layoff you have the following options:

- (A) Continue your health and life insurance for 39 weeks (you pay the full cost premium). At the end of 39 weeks, you may use up the remaining balance of your COBRA entitlement for health insurance only, again at full cost, for a combined total of 18 months of coverage.
- (B) You may elect Cobra only, for health care coverage at full cost, for a total of 18 months. Read number 5 for more details.
- (C) You can convert to a non-group policy with your current plan. This usually covers less, and sometimes but not always, costs less, as well. Read number 4 for more details.

### 2. RETIREMENT

You may continue your Health Insurance as a Retired Employee. You will pay the same percentage of the premium as when you were an active employee. Your contribution for Optional Life Insurance, however, will increase on retirement.

- (A) The retiree option is available to any employee, who meets the qualifications set by the State Retirement Board within this Commonwealth. You can find out whether you qualify by contacting the State Board of Retirement.

### 3. DEFERRED RETIREMENT

You may continue your Group Health and Life Insurance with the total monthly premium cost paid in full by you. There is no contribution made by the Commonwealth.

- (A) The deferred retiree option is available to any employee who defers retirement after ten years of state service or after six years, if the position is abolished or the employee is laid off. You can find out if you qualify for deferred retirement by contacting the State Board of Retirement.

4. CONVERSION POLICY

You have the right to convert your group health and life to non-group coverage. The GIC will notify your Life and Health Insurance carrier of your termination. The carriers will contact you within the next six (6) to eight (8) weeks to offer you a conversion to a non-group plan. Non-group rates and benefits usually differ from those under any of the GIC plans available. Please call your carrier directly with any questions about non-group rates or benefits.

5. COBRA COVERAGE

If you have left state employment for any reason other than termination for gross misconduct, you may continue your present group health coverage for up to 18 months, after which you may then request conversion. The premiums for this 18-month period are paid entirely by you, and there is no contribution by the Commonwealth.



DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

TO: Cabinet Secretaries and Agency Heads

FROM: John J. McGlynn, Commissioner

DATE: January 16, 1991

RE: Notice Requirements/Employee Right To Retirement Board Hearing

G.L. c.32 s.16 provides that certain employees who are being removed or discharged from service, have the right to a hearing before the State Board of Retirement. Employees who are over age 55 and have at least 15 years of creditable service, employees who are under age 55 and have at least 20 years of creditable service, and employees who are veterans and have at least 10 years of creditable service are entitled to such a hearing. This hearing is separate from and independent of any hearing available under the Civil Service laws.

The discharge of employees who are eligible to request this hearing SHALL NOT BECOME EFFECTIVE until and unless a written notice containing a fair summary of the facts upon which the action is taken is filed by the employer with the State Retirement Board, 1 Ashburton Place, 12th Floor, Boston, Ma 02108. In addition, the employee must receive from the employer a notice by registered mail, return receipt requested, of his or her rights to a retirement board hearing, a summary of the retirement options available, and a summary of the facts upon which the action is based. The employee has 15 days from receipt of such notice in which to request a hearing before the State Board of Retirement. The purpose of the hearing is to determine whether the discharge was justified. The Retirement Board is required to conduct a hearing not less than 10 days nor more than 30 days after the filing of such a request.

The attached grid summarizes retirement choices available to public employees. Please note that retirement is not mandatory for employees who have been terminated or whose positions have been abolished. The decision to retire has serious and far-reaching consequences. Such members may leave their contributions in the retirement system. However, interest on such contributions is subject to certain limitations related to length of service and date of hire.

The use of the term 'immediate retirement' refers to benefits which will be payable within 60 days after a member's termination of employment. The use of the term 'deferred retirement' refers to benefits which will be payable at some future date when a member, who has not withdrawn his/her contributions to the retirement system, chooses to retire. This could be months or years after termination of employment. The use of the term 'lump sum payment' refers to a one time only payment - rather than a series of payments over time.

General questions concerning the retirement system may be directed to PERA at (617) 727-9380.





AGE	DATE OF HIRE	CREDITABLE SERVICE	BENEFITS AVAILABLE
55 or more	On or after 1/1/78	10 or more years	Immediate retirement allowance OR defer retirement.
55 or more	On or after 1/1/78	Less than 10 years	Lump Sum Return of contributions from retirement system plus all of the interest which has accumulated.  Please note that if a member voluntarily withdraws from service and was hired on or after 1/1/84, he/she is subject to limitations on the amount of interest.
55 or more	Before 1/1/78	Any number of years	Immediate retirement allowance OR defer retirement.
Under 55	Any date of hire	At least 30 years; or 20 to 30 years if position was abolished or member was discharged w/o moral turpitude.	Reduced immediate retirement allowance OR defer retirement OR lump sum return of contributions from retirement system plus all interest.
Under 55	Any date of hire	10 to 20 years; or 20 to 30 if termination is voluntary	Deferred retirement allowance OR lump sum return of contributions from retirement system plus all interest.
Under 55	On or after 1/1/78	Less than 10 years	Lump sum return of contributions from retirement system plus all interest. Please note that if a member voluntarily withdraws from service and was hired on or after 1/1/84, he/she is subject to limitations on the amount of interest.
Under 55	Prior to 1/1/78	6 to 10 years	If position is abolished or member is discharged without moral turpitude, deferred retirement allowance OR lump sum payment of contributions to retirement system plus all interest.
Under 55	Prior to 1/1/78	Less than 6 years or less than 10 years if voluntary termination	Lump sum return of contributions from retirement system plus all interest.

Please note that if you are entitled to an annual retirement allowance of less than \$360, you must take lump sum return of contributions, rather than an allowance. Questions pertinent to individual circumstances and calculations should be directed to the State Board of Retirement (617-367-7770).





DEPARTMENT OF PERSONNEL ADMINISTRATION

STATE CIVIL SERVICE: REDUCTIONS IN FORCE

THE DEPARTMENT OF PERSONNEL ADMINISTRATION HAS PREPARED THE FOLLOWING QUESTION AND ANSWER SHEET BASED ON ISSUES MOST FREQUENTLY RAISED BY STATE APPOINTING AUTHORITIES

Q. Does an employee separated during his probationary period have the right to appeal the validity of that separation to the Appointing Authority or to the Civil Service Commission?

A. MGL Chapter 31, Section 41 affords such hearing and appeal rights only to tenured employees; that is, those who have completed their probationary periods. However, permanent employees who are separated prior to completion of the probationary period do have reinstatement and re-employment list rights as defined in MGL Chapter 31, Sections 39 and 40. Upon reinstatement or re-employment, the employee must complete service of the unexpired portion of the probationary period.

Q. Can a permanent employee who has been notified of layoff and who is senior in length of service to another permanent employee in a lower title in the same series "bump" the less senior employee even if the more senior person has never held the lower title after certification from an eligible list?

A. In accordance with the provisions of MGL Chapter 31, Section 39, if the person serving in the higher title is senior in length of service, he or she may elect to "bump" the person in the lower title in the same series.

Q. If a tenured employee is reinstated after a layoff of more than six months, will his new seniority date be the effective date of his reinstatement?

A. Permanent employees who are reinstated after a layoff do not lose any seniority. On the effective date of their reinstatement, they regain the seniority date they held at the time of layoff.

Q. If a permanent employee is hired from a re-employment list in a state agency in which he has never previously served, what is his seniority date in that new agency?

A. After appointment from a re-employment list, the employee carries with him his original seniority date, except if a layoff occurs after his re-employment, in which case the

re-employment date serves as the determining factor in making layoffs by seniority.

Q. If an employee who has been laid off declines reinstatement, must the Appointing Authority maintain that employee's name on a "reinstatement list" for future vacancies in the Department?

A. A permanent employee who declines reinstatement by the Appointing Authority must be notified of and offered all appropriate opportunities for reinstatement for the full five year period subsequent to his separation due to lack of work, lack of money, or abolition of position. The Appointing Authority should maintain careful records of all offers of reinstatement and responses from the former employee during that time period.

Q. Agency A has not laid off any employees and has vacancies in a promotional title. An eligible list from a Departmental Promotional examination has been established. If there is a re-employment list for that title must it be used in preference to the promotional list?

A. Under these circumstances, the promotional list will be used in preference to any other eligible list, including the re-employment list.

Q. Agency A has not laid off any employees and has a provisional serving in an entry level title. An open competitive eligible list has just been established upon which the provisional employee can be reached for permanent appointment. However, there is also a re-employment list for that title. Can the Appointing Authority choose to use the open competitive list rather than the re-employment list?

A. If a re-employment list is established for a title in which a vacancy exists, that list must be certified ahead of any open list and an appointment made from that list if there are individuals willing to accept.

Q. When a certification is received from a re-employment list, must candidates be appointed in order OR does the PAR 9 2(n) + 1 formula pertain? Are selection reasons required if someone higher on the list is not appointed?

A. PAR 9 applies to re-employment lists just as it would to an open competitive eligible list. If someone higher on the reemployment list is willing to accept and is not selected, reasons for selection in accordance with MGL Chapter 31, Section 27 and IS 012 must be provided.

Q. Does a person not appointed to a vacancy after certification from a re-employment list have the right to appeal the nonselection to the Civil Service Commission?



A. An appeal may be filed with the Civil Service Commission.

Q. If an agency is under the federal Consent Decrees for entry level public safety positions, will the re-employment list be certified in the Consent Decree ratio order or in order of seniority?

A. The re-employment list must by statute be certified in order of seniority.

Q. Does a tenured person hired from a re-employment list have to complete a new probationary period in the hiring agency?

A. An individual who was tenured at the time of layoff and who is hired from a re-employment list is not required to serve a new probationary period and is considered tenured from his or her first date of employment in the new agency.

Q. In hiring for non-public safety positions from a re-employment list, may an Appointing Authority require a review of the applicants ability to meet the entrance requirements for the position? If the title is a clerical one, may a typing test be required?

A. The Appointing Authority may not require an applicant to resubmit verification of entrance requirements, and no such review should be conducted if the name is certified from the re-employment list. If typing is a valid requirement for the position and is so noted in the Form 30 and the examination announcement for the title in question, a validated typing test may be administered.

Q. If a permanent employee is laid off, and a promotional examination for which he would have been eligible as an employee is held, may he take that examination?

A. Only current and eligible employees may take a promotional examination.

Q. If a permanent employee took a promotional examination and the eligible list is established after he is laid off, may he be certified and, if reached, appointed to the promotional position?

A. While the persons name may appear on the certification, Appointing Authorities may not appoint a non-employee to as promotional vacancy from the eligible list. The employee's name will not, however, be removed from the eligible list during its existence unless he is reinstated and promoted from that list.



Q. If an Appointing Authority is uncertain about the correct seniority date for a permanent employee, can verification and research be provided by the Department of Personnel Administration?

A. DPA can provide assistance in this area. An Appointing Authority should call Employment Information at 727-5504 to request verification if questions arise about a particular employee.

Q. Will DPA provide legal guidance to Appointing Authorities confronting issues of separation and layoff?

A. Appointing Authorities should consult their General Counsel or Legal Counsel for legal guidance in such areas. The Office of Legal Counsel at the Department of Personnel Administration will respond to inquiries from General Counsels or Legal Counsels seeking interpretation of MGL Chapter 31.

January 16, 1991

## ATTACHMENT "A"

### PROVISIONAL, TEMPORARY PROBATIONARY AND NON-TENURED PERSONNEL

#### INSTRUCTIONS FOR USE OF LETTER OF NOTIFICATION

Letter A constitutes a suggested format for letters of layoff for reasons of economy to non-tenured bargaining unit employees. Appointing authorities may choose to develop their own letters consistent with the requirements outlined below.

Letter A has been reviewed by members of the Civil Service Commission, Department of Personnel Administration, Office of Employee Relations, State Office of Affirmative Action and Executive Office for Administration and Finance.

Prior to notifying an employee covered by a collective bargaining agreement that his separation from service is anticipated, the notification requirements outlined in Section 5.3B must be complied with.

It is recommended that letters of notification be hand delivered to all employees affected by a work force reduction. Those employees who are absent from work on that day should have their letters of notification sent by certified mail the same day .

Please insist that payroll clerks use the appropriate codes on PMIS or CAPS or HRIS in order to indicate that the employee's layoff is attributable to lack of money. Use of the proper code is necessary to ensure that laid off employees will be eligible for benefits from DET and any applicable re-call and re-employment rights.





LETTER A-1  
BARGAINING UNIT EMPLOYEES

TO: PROVISIONAL, TEMPORARY, PROBATIONARY, OR OTHER  
NON-TENURED EMPLOYEES

RE: POSITION #

TITLE:

AGENCY:

Dear \_\_\_\_\_:

The recent budgetary action establishes guidelines which mandate a reduction in expenditures for fiscal year 19\_\_\_. The position which you currently fill on a provisional, temporary, or other non-tenured basis cannot be funded after (date)\_\_\_\_\_.

Pursuant to Article \_\_\_\_\_ of the collective bargaining agreement which governs the terms and conditions of your employment, you may within \* two (2) working days of receipt of this notice, file a written request to bump to a lower title in your bargaining unit for which you are qualified, provided that there is an employee junior to you in the lower title. Such request should be addressed to

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who will be available to provide information to you concerning any options you may have and to answer questions concerning vacation entitlement and other matters.

\* Employees in bargaining units 8 and 10 have three (3) working days to request to bump.

In the event that you hold a permanent appointment at a lower grade you have a right to return to that title even if

you have no bumping rights under the collective bargaining agreement. Should you wish to exercise such rights please notify \_\_\_\_\_ within two (2) days.

Employees separated or demoted will be placed on the recall list subject to the provisions of the applicable collective bargaining agreement. I regret that these unfortunate circumstances require this action, and I thank you for your service to this agency.

You may have the right to appeal this layoff decision to the Office of Employee Relations, State Office of Affirmative Action, Massachusetts Commission Against Discrimination, or other forums as appropriate.

Sincerely,

Appointing Authority

LETTER A-2

TO: NON-TENURED MANAGERIAL, CONFIDENTIAL AND UNASSIGNED  
EMPLOYEES

Re: POSITION

TITLE:

AGENCY:

Dear \_\_\_\_\_:

The recent budgetary action establishes guidelines which mandate a reduction in expenditures for fiscal year 19\_\_\_. I regret to inform you that the position which you currently fill cannot be funded after \_\_\_\_\_ and your services must be terminated at that time.

Please contact \_\_\_\_\_ to obtain information concerning any options you may have, including vacation entitlement and other matters.

In the event that you hold a permanent appointment at a lower grade you have a right to return to that title.

Should you wish to exercise such rights please notify \_\_\_\_\_ within two (2) days.

I regret that these unfortunate circumstances require this action, and I thank you for your service to this agency.

You may have the right to appeal this layoff decision to the Office of Employee Relations, State Office of Affirmative Action, Massachusetts Commission Against Discrimination, or other forums as appropriate.

Sincerely,

Appointing Authority





ATTACHMENT "B"

TENURED EMPLOYEES

Instructions for Use of Letters

- . In developing letters for the separation from service of tenured employees, appointing authorities should first acquaint themselves fully with the 6th paragraph of Chapter 31, Section 26.
- . Before any action is taken appointing authorities must fully acquaint themselves with Sections 33, 39, 40, 41, 41A, 42, 43, 44, 46 of Chapter 31 and Sections 9A, 9B, 9D of Chapter 30.
- . It will be necessary to describe fully in the letter of notification for hearing the following:
  - the reasoning behind the decision to select the job title as one affected by a layoff for reasons of economy, and
  - the reasoning behind the decision to select this individual as one affected by a layoff for reasons for economy.
- . The appointing authority should insure that:
  - the employee is given seven (7) days written notice of the date, time and place of hearing
  - employee is given written notice of the appointing authority's decision two (2) days after the hearing.

- . A tenured employee may choose to exercise demotion (bumping ) rights before the date of hearing if he/she chooses to waive his/her right to be heard. It is also possible for such an employee to give his/her consent to demotion after the appointing authority notifies the employee of the hearing decision, rather than prior to the hearing.
- . The appointing authority may wish to refer to Sections 39 and 40 of M.G.L. ch. 31 in his letter of hearing decision.
- . If the preceding instructions are not followed carefully, the contemplated termination may be deemed invalid during the hearing procedure.
- . All employees must also be informed of their right to appeal layoff decisions to the Office of Employee Relations, State Office of Affirmative Action, Massachusetts Commission Against Discrimination, or other forums as appropriate.



LETTER B-1

TO PERSONS WITH TENURE - Contemplated Action

RE: Position: #

Title:

Agency:

Seniority Date:

Dear \_\_\_\_\_:

It is necessary for reasons of economy that (department or agency) initiate a reduction in work force. The department is contemplating the termination of your services as of close of business on \_\_\_\_\_ (date) \_\_\_\_\_, (as well as other employees serving in the same position).

While it is anticipated that several employees serving as (position title) will be retained, such retention is based on seniority as defined by (Chapter 31. Section 33 or Section 9A of Chapter 30.

The reasons for the contemplated termination of your employment is the determination made by this department that in order to limit expenditures to the appropriations made available in Chapter \_\_\_\_\_ of the Acts of 19\_\_\_\_, it is necessary to reduce the total work force of this department. (Here the appointing authority must describe the general reduction in work force in the entire department with specific reference to the reasons for selecting this title and this employee as part of the work force reduction).

This letter is to notify you of the opportunity for a full hearing on (date, time and place) on the contemplated termination of your employment. This hearing will be held pursuant to Section 41 of

Chapter 31 of the General Laws and as required by said section, copies of sections 39, 40, 41, 41A, 42, 43, 44 and 45 are enclosed.

Section 39 allows a person in a promotional title to seek demotion. To do so, you must, within seven days of this notice, notify me in writing that you choose to demote to the next lower title. If, after all persons have exercised their demotion rights, there are too many persons for the number of positions in the lower title, you may be demoted to successively lower titles, if any, until your seniority affords you protection against further demotion.

Should you choose to demote to a lower title instead of the proposed layoff, you will abandon any right to contest the proposed layoff, or the demotion, at the Civil Service Commission.

In order to plan appropriately, I would appreciate if you would notify me in writing at least two (2) days prior to the date of the hearing if you do not plan to pursue your rights to a hearing.

You may have the right to appeal this layoff decision to the Office of Employee Relations, State Office of Affirmative Action, Massachusetts Commission Against Discrimination, or other forums as appropriate.

Sincerely,

Appointing Authority

Enc. (Chapter 31, Sections 39, 40, 41, 41A, 42, 43, 44 and 45)

LETTER B-2

TO PERSONS WITH TENURE -- Written Notice of Decision After  
Hearing if Decision is to Effect  
Separation

RE: Position #:

Title:

Agency:

Seniority Date:

Dear \_\_\_\_\_:

As a result of a hearing held before me on (date of hearing), I have determined that there is just cause for the termination of your services effective (date).

(Detailed reasons for your decision must be included, citing appropriate findings from the hearing in the remainder of this paragraph).

You are referred again to Chapter 31, Section 41 which describes your right to appeal to the Civil Service Commission.

Under the provisions of Chapter 31, Section 39, you may, within seven (7) days of receipt of this letter, choose to be demoted to a position in a lower grade in the same or similar class if the incumbent in such a grade has less seniority than you. If you choose to be demoted as described, you must provide me with your written consent within seven (7) days of receipt of this letter. You are entitled to be restored to the same position or one similar to that which you presently hold, according to seniority, as soon as sufficient money is available to support a management decision to fill those positions.



I regret that these unfortunate circumstances require this action, and I thank you for your service to this agency.

You may have the right to appeal this layoff decision to the Office of Employee Relations, State Office of Affirmative Action, Massachusetts Commission Against Discrimination, or other forums as appropriate.

Sincerely,

Appointing Authority

Enc. (1) (Separation Assistance Information)



